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REMARKS/ARGUMENTS

The following remarks are responsive to the June 10, 2003 Office Action.

In the Office Action, the Examiner rejected claims 1-2 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,053,946 (Wilkinson). Claims 1 and 3 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,206,934 (Phillips). Claims 1 and 3 were also rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 5,156,631 (Merlette). Finally, claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkinson.

Claim 1, as amended, is directed to a prosthetic foot that includes a footplate attached to a connector such that the footplate is adapted to pivot about a unitary axis and flex with respect to a second axis. This multiaxial movement of the footplate is disclosed in several places in the specification including, for example, page 7, lines 6-21. As such, no new matter is added. Furthermore, Figures 12 and 13 exemplify a degree of pivot of the footplate. The pivotal movement of the footplate about a unitary axis is not, however, anticipated or rendered obvious by any of the cited prior art.

Wilkinson discloses a prosthetic foot that is adapted to flex about a first axis of the foot as is depicted in Figure 4 of the patent. This degree of flexing allows for motion in the anterior-posterior direction. As discussed in a previous amendment, because Wilkinson teaches that "[a]n appropriate fastener 94, such as a rivet, may be used to *secure* the plate 90 to the foot portion 80, Wilkinson does not disclose or suggest that its foot portion could rotate or move in a medial-lateral direction about a second axis. In particular, Wilkinson does not disclose a prosthetic foot that pivots about a unitary axis.

The Examiner states that the connector 94 in Wilkinson "is adapted to rotate about the [longitudinal] axis of portion 76." The Applicant respectfully disagrees with this assertion. Because item 76 is defined as the upper portion of the prosthetic foot apparatus 70, the Applicant understands the longitudinal axis to extend vertically through the upper portion 76 substantially vertical to the plate 90. Nothing in the Wilkinson specification suggest that the connector 94 is adapted to rotate about such an axis. In fact, the fastener 94 connects the plate 90 to the foot portion 80 of the Wilkinson device. This type of connection does not disclose or suggest that the foot portion could rotate or move in a medial-lateral direction about an axis running parallel to the plate 90. Again, the Applicant asserts that Wilkinson actually teaches away from a pivoting or rolling motion of the connector and plate in a medial-lateral direction as such rotation would cause the rivet or bolt to snap as the footplate rotated about the horizontal leg of the tubular member.

Because Wilkinson does not disclose a prosthetic foot that has a footplate adapted to pivot about a unitary first axis and flex with respect to a second axis, the Applicant requests that the Examiner withdraw the rejection of claims 1 and 2 under 35 U.S.C. § 102(e) with respect to the Wilkinson patent.

As with the Wilkinson patent, Phillips also teaches against the rotation of the footplate about a unitary axis. Phillips does teach a prosthetic foot that rotates about an axis transverse to that of the footplate through the use of an ankle block 16 "sandwiched between the foot plate 12 and the ankle plate 14." This ankle block "is preferably glued or bonded to both plates using polyurethane adhesive or other known securement technologies." Phillips, Col. 3, lines 5-9. This rotational movement about the spring between the ankle plate and the footplate is further

illustrated in Figures 5a –5d of the patent. This movement, which is referred to as "rollover" in the patent (col. 10, ll. 11-15) allows the footplate to flex in the anterior-posterior direction. Phillips does not, however, teach about pivoting of the footplate about a unitary axis in the medial-lateral direction. In fact, Phillips teaches away from such rotation as the foam used for the ankle block does not have a unique axis of rotation. Furthermore, the foot portion disclosed in Phillips does not pivot about the vertical axis as the foot portion is pinned using two bolts 48 to the vertical attachment member 34 (see, Figure 2). Therefore, Phillips does not disclose a prosthetic foot having a footplate attached to a connector such that the footplate is adapted to pivot about a unitary axis. For this reason, the Applicant requests that the Examiner withdraw the rejection of claims 1 and 3 under 35 U.S.C. § 102(e) with respect to Phillips.

Concerning the rejection of claims 1 and 3 under 35 U.S.C. § 102(b) as being anticipated by Merlette, the Applicant asserts that claim 1, as amended, is not anticipated in that Merlette does not disclose a foot that pivots about a unitary axis. As with the other prior art cited by the Examiner, Merlette discloses a prosthetic foot that flexes about a first axis but does not pivot about a unitary axis. Instead, the Merlette foot utilizes resilient material 21 extending "from the toe tips back to the area where the anterior toe section 13 of main member 10 and plantar toe section 16 of sole member 15 diverge." Merlette, col. 4, ll. 60-63. This type of resilient material does not allow the foot to pivot about a unitary axis and therefore, the Merlette foot does not anticipate claims 1 and 3. For this reason, the Applicant requests that the Examiner withdraw the rejection of claims 1 and 3 under 35 U.S.C. § 102(b) with respect to Merlette and allow the claims to issue.

With regard to claim 3 under 35 U.S.C. § 103(a) with respect to Wilkinson, for the reasons discussed above, Wilkinson does not render obvious the prosthetic foot claimed in the instant application. As such, the Applicant requests that the Examiner withdraw this rejection of claim 3 and allow all of the claims pending in the application to issue.

This application is believed to be in condition for allowance and early favorable action is requested. The Examiner is requested to call the undersigned attorney if that would be helpful in resolving any matters that might remain.

Respectfully submitted,

Date: _____

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